In the High Court of Uttaranchal, at Nainital.

Appeal From Order No. 106 of 2004

Sarvmangla Adhyatma Yog Vidhyapeeth through
its Manager / Founder Ravindra Ji Brahamchari
R/o Bimria Ghat Begusarai Bihar
Presently, R/o Industrial Area
Haridwar ...Defendant/Appellant.

Vs.

Naresh Agrawal S/o Bansraj Agrawal,
Proprietor of Himalaya Rock Chemicals,
18-D, Industrial Area,
Haridwar .. Plaintiff/ Respondent.

Sri Pankaj Miglani, learned counsel for the appellant.
Sri Lok Pal Singh, learned counsel for the respondent.

Hon'ble B.C. Kandpal, J.

This is defendant's appeal against the order dated 20-2-2004, passed by the Additional District Judge/ IIIrd F.T.C, Haridwar in O.S. No. 200/2001, allowing the ad-interim injunction application of the plaintiff, restraining the defendant to raise any construction over the land in dispute.

2- Brief facts giving rise to the present appeal are that on 26-7-1976 the U.P. State Industrial Development Corporation Ltd. leased 1000 square yard land of Plot No. D-18, situate within Industrial Area, Haridwar, to plaintiff/respondent Naresh Agrawal, for construction of a Plaster of Paris Factory. Thereafter, on 2-8-1976 an agreement was also entered between the parties. Since then the plaintiff/ respondent is the lease-holder of the above land. The plaintiff/respondent in the western portion of the land constructed the factory and its office and in the eastern side, rooms were got constructed and rest portion of the land was kept vacant. According to the plaintiff/ respondent he could not get loan from U.P.F.C. for purchase of machinery and he had to

suffer loss in the business, hence he could not repay the earlier loan given to him by the U.P.F.C. and realization proceedings were started against him. In the meantime he came in contact with defendant/appellant and he made proposal to the plaintiff/respondent, if he make available the vacant portion of the land @ Rs. 1000/- per yard, he is ready to repay his loan. The plaintiff /respondent informed the defendant/appellant that for this purpose permission of U.P.F.C. was required. The land was given to the defendant to use it for some time but he was not allowed to make any alteration, construction etc on the land. According to the plaintiff/ respondent the defendant/ appellant wanted to raise construction on the above land, despite his protest, hence he instituted the civil suit for permanent injunction before the Civil Judge (S.D.) Haridwar. He also filed an application 6-C/2 under Order 39 Rules 1 and 2 C.P.C. and Section 151 Cr.P.C. in the suit for ad-interim injunction. It was also alleged that during the pendency of the suit, the defendant has made construction and raised a tin-shed on the disputed land.

3- The case of the defendant-appellant is that the plaintiff has transferred a portion of plot No. 18-D (1100 square feet) to him at the cost of Rs. 4,51,000/- and also executed an agreement deed on 31.3.2000. The land include three roofed rooms, latrine, bathroom, kitchen, three tin-sheds and temple of God Shankar. The plaintiff also handed over the possession of the land to the defendant on getting Rs. 2,51,000/-. It was also alleged that the defendant is always ready to pay the balance amount of the agreement deed for which he also sent a notice through his counsel on

13.11.2001, but the plaintiff has not taken steps for getting no-objection from U.P.F.C., as per the condition of agreement deed. It was also alleged that the defendant has not raised any new construction on the disputed land, but he got repaired the temple of Goddess Durga and its retaining wall.

4- The plaintiff/respondent also filed rejoinder affidavit before the trial court reiterating that the defendant/appellant despite the ad-interim injunction passed against him, has disobeyed the court's order and for the defiance of the order, contempt proceeding in Misc. Case No. 57/2002 are pending against him before the court.

5- The trial court on perusing the documents exchanged by the parties and hearing the learned counsel for the parties, was pleased to allow the application No. 6-C/2 for obtaining the ad-interim injunction and directed the defendant-appellant not to raise any construction over the disputed land, vide the judgment and order dated 20-2-2004.

6- Feeling aggrieved by the aforesaid judgment and order, the present appeal has been order by the defendant before this court.

7- Heard learned counsel for the parties and perused the record.

8- The record reveals that the land in question was allotted in favour of the plaintiff/respondent for installation of the plaster of paris factory and the agreement was also entered between the parties in this regard.

9- This is the admitted fact between the parties that on the portion shown as letter 'B' in the plaint, the defendant/appellant is in possession of the land in question and this land is measuring about 1000 Sq. Yard while the entire property in question is 1100 Sq. feet. Both the parties have also admitted the agreement entered between the plaintiff/respondent and the defendant/appellant on 31.03.2000. It is also admitted fact between the parties that the owner of the disputed land is U.P. State Industrial Development Corporation Ltd. (hereinafter referred as "Corporation") and as per the condition of the agreement between the plaintiff/respondent and Corporation, the lease holder, plaintiff/respondent shall not transfer the land to anyone without prior permission of the Corporation. Para - 4 of the terms of agreement reads as follows:-

> *"That the Licensee will not directly or indirectly transfer, assign, sell, encumber or part with his interest under or the benefit of this Agreement or any part thereof in any manner whatsoever without the previous consent in writing of the Grantor and it shall be open to the Grantor to refuse such consent or grant the same subject to such conditions as may be laid down by the Grantor in that behalf."*

10- The aforesaid condition, therefore, makes the picture clear that the plaintiff/respondent will have no right to transfer the land without prior permission of the Corporation. The record nowhere indicates that the permission from the Corporation has been obtained as yet. Therefore, in case, if the defendant/appellant is in possession over the land in question even then he cannot be said to be the rightful

owner and the appellant, therefore, will have also no right either to raise any construction or to make any alteration over the land in question.

11. The judgment of the court below reveals that the Amin report, available on the record, also indicates that when he visited the spot, the construction work was going on and no objection against the Amin's report has been filed by the defendant/appellant.

12. As the lease is in favour of the plaintiff/respondent and no permission has yet been granted by the Corporation to transfer the same, therefore, under the circumstances, the defendant/appellant cannot be said to be the rightful owner of the land in question.

13. My attention has been invited by the learned counsel for the plaintiff/respondent on Annexure C.A. -1 which is the order passed by the court below on an application 7-C filed by the defendant/appellant before the court below in Original Suit No. 121 of 2003.

14. The trial court while deciding that application directed that both the parties shall maintain status quo with regard to any construction to be raised over the plot in question. This order has been passed in suit filed by the defendant/appellant before the court below.

15. It is thus quite clear that the court below has specifically directed both the parties to maintain status quo and not to raise any construction over the disputed land. Therefore, I do not find any justification to interfere in the impugned order dated 20.02.2004

passed by the court below by which the defendant/appellant has been restrained from raising any construction over the disputed land.

16. The impugned order does not suffer with any illegality or infirmity and is liable to be confirmed.

17. Accordingly, the appeal is dismissed. No order as to cost.

(B.C. Kandpal, J.)

Dated: September 8, 2006
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